Supreme Court, U.S.
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October Term 1998

IN THE

SUPREME COURT OF THE UNITED STATES

RONALD BRET CASS - Petitioner

VS.

STATE OF TENNESSEE - Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF THE STATE OF TENNESSEE AT JACKSON

PETITION FOR WRIT OF CERTIORARI

RONALD BRET CASS

2112 PRINCE PLACE

SAVANNAH, TENNESSEE, 38372

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Question I

Whether , Rule 803 (3) (4) (6) of the Tennessee Rule of Evidence and T.C.A. 68-11-402 and T.C.A. 68-11-404, in a criminal case, violates, the privacy and liberty clause of the 4th and 14th Amendment and the self incrimination clause of 5th Amendment to the United States Constitution, when under these rules and statutes, The State of Tennessee, in their case in chief, entered into evidence, the medical records, of the defendant, and testimony of the defendants doctor and nurse as to the contents of the medical records and statements made by the defendant, in obtaing treatment?

Question 2.

Was the Petitioner, Constitutional Right to Due Prcess of Law violated, when the State Prosecutor, knowingly uses false testimony and failed to correct known false testimony of state witnesses, in obtaining a criminal conviction?

PARTIES

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OPINION BELOW

The opinion of the Court of Criminal Appeals, for the State of Tennessee, at Jackson, is unreported at this time.

JURISDICTION

The Court of Criminal Appeals for the State of Tennessee, at Jackson, affirmed the trial court decision on Jan. 23rd, 1998. No petition to rehear was filed.

A timely, Permission to Appeal under Rule 11, T.R.A.P. to the Supreme Court of the State of Tennessee, was filed . The Tennessee Supreme denied, the permission to appeal on, Oct. 19th, 1998.This Court, Jurisdiction is invoked under Title 28 U.S.C. 1257 (a) .

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED.

Rule 803 (3) (4) (6) of the Tennessee Rules of Evidence.

T.C.A. 68-11-402 and T.C.A. 68-11-404

Privacy clause of the 4th Amendment, U.S. Constitution.

Due Process and self incrimination clause of the 5th Amendment, U.S. Constitution.

Denial of Liberty without Due Process of Law, 14th Amendment, U.S. Constitution.

The text of these constitutional provision and Rule 803, of the Tennessee Evidence and T.C.A. 68-11-402 and T.C.A. 68-11-404 are set forth in the Appendix.

STATEMENT OF THE CASE

On the 3rd of Nov. 1995, the Petitioner Cass, was involved in a single vehicle accident, which he was the only occupant. The vehicle that the Petitioner, Cass, was driving was a 1970 model Ford Truck. This truck did leave the roadway, and did over turn, crushing in the top and trapping the Petitioner, Cass inside the vehicle, unable to move. The truck came to rest in a upside condition, and due to this, gasoline began to pour from the fuel tank, that was located in the passenger compartment. Gasoline did run onto the Petitioner Cass, and did run on the ground, just inches from his face.

After being trapped, for approximately one hour, and forced to breath the intoxicating fumes of gasoline, the Petitioner, Cass, was removed from the vehicle by members of the Hardin County Fire and Rescue. Upon his removal he, was strapped down on a spine board and transported via, ambulance to the Hardin County Hospital, where he was treated by the emergency room doctor and nurses.

As the Petitioner, Cass, was being treated, Steve Florence, of the Tennessee Highway Patrol, entered the examination room, and demanded that the Appellant Cass, take a blood alcohol test. The Petitioner, Cass, refused, due to religious reasons, to have, blood taken from his body, Trooper Florence did not offer any other type of test and left, the examination room.

After the Petitioner, Cass was discharged from the Hardin County Hospital, he was placed under arrest for D.U.I. by Trooper Florence and transported to the Hardin County Jail, where he was release on bond.

On Jan. 19, 1996, the Petitioner, Cass, appeared in the General Session Court of Hardin County, for a preliminary hearing. At the start of this hearing, the State Prosecutor, held an envelope up and stated that it contained the medical records of the Petitioner, Cass, which he had subpoena from the Hardin County Hospital.

The Petitioner, Cass did object to this, on the grounds that the records, were privilege information and that he had not been informed by the state of them being subpoena.

Before the court could rule on this objection the State Prosecutor stated that he with draws the warrant in this cause.

The court, then dismiss all charges against the Petitioner, Cass. On March 25th, 1996 the Petitioner, Cass, was indicted, by the Hardin County Grand Jury, on the charge of Driving under the Influence, and on May 7th 1996, was arraigned in the Circuit Court of Hardin County.

On May 24th 1996, the Petitioner, Cass, learn that his medical records, had been attached to pleading by the State Prosecutor and entered into the "Public Record" of this cause.

The Petitioner, Cass, filed a Petition to Supress the Medical Records. This Petition was heard by the trial court on the May, 30, 1996. The trial court denied the Petition to Supress Medical Records, stating in the court opinion the proper foundation had been laid by the State. (Petition to Supress Medical Records, and Affidavit in Support, Record Vol. I, p. 126 - 142. Trial Court Opinion, Record Vol. II p. 70,)

On May, 31, 1996, the Trial was held in this cause. Testifying for the state, was the arresting officer, Steve Florence. Officer Florence was asked the following questions, by the State Prosecutor and gave the following answers.

(Transcript of Evidence, Page 45. lines 5 thur 25, Page 46, lines 1 thur 25, Page 47. lines 1 thur 5)

Q. Did you perform any tests at that time?

A. I performed a Nystagmus gaze that consists of a person holding their head straight and still following an object with their eyes and their eyes only.

Q. Now, this test, have you been qualified to give it?

Have you been....received training?

MR. CASS: Objection to this test.

THE COURT: Sustained

Q. Have you received training for this test?

A. Yes, ma'ma.

Q. Would you.....

MR. CASS: Objection.

THE COURT: Subtained.

Q. Would you explain what you did at this point?

A. Well, I instructed him not to move his head. I pulled my ink pen out and told him to follow my pen to.....

MR. Cass: Objection.

THE COURT: Subtained. You-all approach the bench

(Whereupon, the following bench conference, was held outside the presence of the jury.)

THE COURT: Unless you're prepared to establish a scientific reliability of the Nystagmus gaze test, we're not getting into this.

MS. CAHILL: You're not getting into that?

THE COURT: There's no case law that shows it's scientific reliable. It's been sent back for that. Unless you're prepared to establish it, don't go any further. Okay?

MS. CAHILL: Okay.

(Whereupon the bench conference was concluded)

BY MS. Cahill:

Q. Did you have an opportunity to observe and talk with to the defendant?

A. Yes.

Q. And based on your observations and your conversation what was your opinion of his condition?

A. That he was impaired.

Q. And what did you subsequently do after you had talked with him and observed him?

A. I placed him under arrest for DUI.

Q. And at that point where was he taken?

A. At that point there he was moved from the scene by ambulance to Hardin County Hospital.

The state, called Mary Davison, who is the Keeper of the Records of the Hardin County Hospital. The State of Tennessee, had issued a subpoena on May 30, 1996, for her to appear at trial along with the medical records of Ronald Bret Cass. The following is the pertinent excerpts from her testimony.

(Transcript of Evidence, page 58, lines 15 thur 22)

Q. At the hospital. Now, you were subpoenaed here today to bring the records of the defendant, Robert Cass, and his hospital entries on November 3rd 1995?

MR. CASS: Objection. That's privileged information. I Haven't released that information to anyone.

THE COURT: Overruled.

The state next called Dr. Janet Lard, who was the emergency room doctor, who treat the Petitioner Cass, on Nov. 3rd, 1995. The following is the pertinent excerpts from her testimony.

(Transcript of Evidence, P. 70 & P. 71 lines 1&2)

On Direct Examination by the State.

MS. CAHILL: Your Honor, I'm going to have to pass her Exhibit 3. (Exhibit 3 : Medical Records of Cass)

THE COURT: Pass Exhibit 3 to Dr. Lard, please.

Q. Dr. Lard, would you open that and examine that? And can you identify on the first page, your signature?

A. Yes.

Q. And is that a true and correct copy of your notes made that evening?

A. Yes.

Q. The page one and two are from laboratory work; is that correct?

A. Yes.

Q. And is this the various laboratory work that you directed that to be drawn by Mr. Kimbrough and to be analyze?

A. Yes.

Q. Now, on page 2 the last entry in there is called special chemistry alcohol. Would you read the numbers by that?

MR. CASS: objection. Ms. Lard didn't take these tests. She came....

THE COURT: Did you rely upon these test in your Treatment of the defendant?

A. Yes, I did.

THE COURT: Overruled.

(Transcript of Evidence P. 73, lines 10-21)

Cross, Examination: Cass.

Q. Do you remember making a statement to me that you had taken this blood for a medical purpose?

A. Yes.

Q. So it was taken purely for medical purposes?

A. Right.

Q. Do you feel that a patient has a confidentiality type relationship with his physician?

A. Yes.

(Transcript of Evidence, P 76, lines 1 thur 4)

Q. I guess what I'm getting at is did you have the results of this test before my exit of the hospital?

A. Yes, I did.

The state call Khristise Mathis, who was the emergency room nurse, admitted and discharged and treated the Petitioner, Cass on the 3rd of Nov. 1995. The pertinent, testimony is as follow:

(Transcript of Evidence, P. 113 lines 6-8 & 15-16 0

Cross Examination: Cass:

Q. Did you try to obtain my signature on any of this?

A. You were strapped down to a spine board with head blocks.

Q. Approximately how long was I in your care?

A. From 19:40 to 21:10.....

The state called David Kimbrough, the person who took the blood from the Appellant Cass, and performed the blood test. Mr. Kimbrough pertinent testimony, as to the medical records, is as follows. Cross Examination by Cass:

(Transcript of Evidence, P. 83, lines 7 thur 10)

Q. Why is your signature not on these tests?

A. Well, this is printed out in the emergency room, by the computer and it has my initials on it there at the side. ,

The Petitioner, Cass, was convicted and sentence to spend, 6 months in jail and pay a $2,000.00 fine. A motion for new trial was timely filed, in the trial court. The trial court denied the Petitioner, Cass, Motion for New Trial. (Motion for New Trial, Record, Vol. II P. 72 - 122; Court Order : Record Vol. II page 124,)

The Petitioner, Cass did appeal the decision of the trial court, to the Court of Criminal Appeals at Jackson.

The Court of Criminal Appeals for the State of Tennessee at Jackson on the 23rd of Jan. 1998, affirmed the trial court decision in this cause.

The Court of Criminal Appeals as to the medical records, held that a criminal defendants medical records are subject to subpoena and that they are admissible under Rule 803 (6) of the Tenn. Rules of Evidence and that medical records where not constitutionally protected. (Opinion : Appendix)

As to the question of the state using false testimony, to convict a defendant accused of a crime. The Court of Criminal Appeals held that there was no evidence in the record to support this claim. (Opinion: Appendix)

The Petitioner, Cass did, file a Petition for Permission to Appeal to the Tennessee Supreme Court, on these two questions. This petition was denied by the Tennessee Supreme Court on Oct. 19, 1998. (Opinion: Appendix)

REASONS FOR GRANTING WRIT

Question 1.

Whether, Rule 803 (3) (4) (6) of the Tennessee Rule of Evidence and T.C.A, 68-11-402 and T.C.A, 68-11-404 in a criminal case, violates, the privacy and liberty

clause of the 4th and 14th Amendments and the self incrimination clause of the 5th Amendment of the United States Constitution, when under these rules and statutes, the State of Tennessee, in their case in chief, entered into evidence, the medical records, of the defendant, an testimony of the defendants, doctor, and nurse as to the contents of the medical records and statements made by the defendant, in obtaining treatment?

This question goes to the very heart of the physician patient relationship and whether or not a citizen of these United States has the constitutional right, to seek medical treatment, without the fear, that anything he might tell his doctor or nurse, in obtaining treatment, or the fact that he sought medical treatment, would be used against him, either by the government or a private party.

The United States Supreme Court, has consistently held that the physician-patient-relationship is protected by the Constitution of these United States.

This Court in GRISWOLD V. CONNECTICUT 381 U.S. 479, 532 (1965), held, where two persons had been convicted

of giving advice on contraception, this Court permitted the defendants, one of whom was a licensed physician, to assert the privacy rights of married persons whom they advise. This Court pointed to the "confidential" nature of the relationship between the physician and the married persons, and reason that the rights of the latter were "likely to be deluted or adversely affected" if they could not be asserted in such a case.

In ROE V. WADE 410 U.S. 113, 178 (1973) and DOE V. BOLTON 410, U.S. 179, 223 (1973) this Court held, as placing the doctor patient relationship among those zones of privacy accorded constitutional protection. While noting that Roe and Doe concerned the most intimate of personal relations, sexual intimacy and the decision to bear a child, this court refused to hold the doctor patient relationship constitutionally protected only when matters of childbearing was at stake. Rather, this Court, noted the intimate nature of a patient's concern about his bodily ills and the medication he takes, and held that these matters as well were protected by the constitutional right of privacy.

Justice Douglas in his concurring opinion in DOE V. BOLTON 410 U.S. 179, 223 (1973) at page 219; quote:

" The right of privacy has no more conspicuous place than in the physician-patient relationship, unless it be in the priest-penitent relationship. It is one thing for a patient to agree that her physician may consult with another physician about her case. It is quite a different matter for the State compulsorily to impose on that physician patient relationship another layer"

Likewise, most of the several states have statutes which protect the physician patient relationship. The Arkansas Court of Appeals held in FINNEY V. STATE OF ARKANSAS 623 S.W. 2d. 847, 848 (1981) at page 48;

"The policy behind the physician patient privilege is to encourage patients to communicate openly with their physicians and to prevent the physicians from revealing infirmities of the patient."

As set forth in the testimony of the Hardin County Keeper of the Records, Mary Davison, (Transcript of Evidence, P 60, lines 18 thur 21 on cross by the defendant Cass)

Q. Okay. Who has a right to view these records?

A. Who has the right to view them? Anyone with a subpoena.

T.C.A. 68-11-401 thur T.C.A. 68-11-408 governs subpoena of medical records. T.C.A. 68-11-402 mandates that upon service of a subpoena duces tecum a hospital or community health center has 5 days in which to comply with the subpoena and produce the medical records of a patient.

T.C.A. 68-11-404 (a) 3, (b) allows medical records to be subpoena in a criminal proceeding and allows the records to be open and examined, by the party subpoenaing the medical records, so long as he supplies the opposing party with a copy.

There is no requirement in these statutes that the hospital be informed if a patient has waived the confidentially of the records.

There is no requirement in these statutes that the patient be notify prior to his or her records being subpoena or being release by the hospital.

There is no requirement in these statutes which requires a judicial determination be made, to decide if the patient has waived his right of confidentially in the records, prior to the subpoena and the release of the medical records.

There is no provisions in these statutes which allows the patient or doctor a chance to be heard prior to the medical records being subpoena and release.

Rule 803 (3) of the Tennessee Rules of Evidence, allows and compels a doctor or medical personnel to testify as to the existing Mental, Emotional, or Physical condition of a patient.

Rule 803 (4) of the Tennessee Rules of Evidence, allows and compel a doctor or medical personnel to testify as to statements made by a patient for the purpose of medical diagnosis and treatment.

Rule 803 (6) of the Tennessee Rules of Evidence, allows an opposing party to enter the medical records of a patient into evidence.

There is no provisions in these Rules of the Tennessee Rules of Evidence which mandate that the patient waive the doctor patient relationship prior to the introduction of this evidence.

The Court of Criminal Appeals for the State of Tennessee, in their opinion states, that a person, medical records are not constitutionally protected. In this opinion the Court of Appeals cites STATE V FEARS, 659 S.W.2d. 370, 376 (Tenn. Crim. App. 1983); as authority for their opinion.

In STATE OF TENNESSEE V. FEARS 659 S.W. 2d. 370, 380, (Tenn. Crim. App 1983) at page 376; not only does the

Tennessee Court of Criminal Appeals state that a patient, medical records are not constitutionally protected but the said court also held; quote:

> " Furthermore, in Tennessee, at common law, neither the patient nor the physician has a privilege to refuse to disclose a communication of one to the other, nor does either have a privilege that the communication not be disclosed to a third person."

It is the Petitioner, opinion, that T.C.A. 68-11-402 and T.C.A. 68-11-404 and Rules 803 (3) (4) (6) are over broad and vague. As these Statutes and Rules, have been used in the State of Tennessee, they have infringed, upon the constitutionally protected physician patient relationship, which is protected, under the privacy clause of the 4th and 5th Amendment and the liberty clause of the 14th Amendment of the Constitution of these United States.

Additionally these statutes and rules as used by the State of Tennessee, are repugnant to the 5th Amendment, self incrimination clause of the Constitution of the United States.

Whenever a State uses, medical records of a criminal

defendant, which contain statements he made in order to obtain medical treatment, this is in essence, compelling the criminal defendant to give evidence against himself, in violation of the 5th Amendment to the United States Constitution.

A person should be free to seek medical treatment and to tell his doctor or medical personnel anything which might assist them in providing the best medical treatment, possible, without fear that the government or private parties would use this information, against him.

Question 2.

Was the Petitioner, Constitutional Right to Due Process of Law, violated, when the State Prosecutor, knowingly uses false testimony and failed to correct known false testimony of state witnesses, in obtaining a criminal conviction?

The Court of Criminal Appeals for the State of Tennessee, on this issue stated in it's opinion, that it would not consider this issue because, there is no evidence in the record to support the charge of perjury.

It is the opinion of the Petitioner, that the Court of Criminal

Appeals over look and completely misinterpreted the material facts of this case and this issue.

It is a well established principle of law, that the state's use of false testimony, to convict an accused, is violative of the right to a fair and impartial trial, as imbodied in the "Due Process Clause" of the Fourteenth Amendment, to the United States Constitution, as this Court held in MILLER V PATE 386 U.S. 1, 7 (1967); ALCORTA V TEXAS 355 U.S. 28, 32 (1957) PYLE V STATE OF KANSAS 317 U.S. 213, 216 (1942);

The Court of Criminal Appeals for the State of Tennessee, held in STATE V. SPURLOCK 874 S.W. 2d. 602, 624, (1993) at page 617; when an accused alleges that he has been denied a constitutional right, the accused must prove the deprivation by a preponderance of the evidence. This standard of proof applies when it is alleged that a district attorney general has failed to correct the known false testimony of a prosecution witness, or has used false evidence to convict an accused.

It is the opinion, of the Petitioner, that the record of this cause does contain by a preponderance of the evidence that the State Prosecutor, did knowingly use false testimony, from the

state witness, Steve Florence and the State Prosecutor did fail to correct the known false testimony of the state witness Lard.

As set forth in the Tennessee implied consent statute, T.C.A. 55-10-406 (a) (1) quote:

"Any person who drives any motor vehicle in the state is deemed to have given his consent to a test for the purpose of determining the alcoholic or drug content of that person blood;

provided that such test is administered at the direction of a law enforcement officer having reasonable grounds to believe such person was driving while under the influence of an intoxicate or drug as defined in T.C.A. 55-10-405..."

The State Prosecutor in an effort to show that the arresting officer had reasonable grounds to demand that the defendant Cass submit to a blood alcohol test ask the following questions of the state witness, Steve Florence; quote from the Transcript of Evidence pages 45 & 46.

Q. Did you perform any tests at that time?

A. I performed a Nystagmus gaze that consists of a person holding their head straight and still following an object with their eyes and their eyes only.

Q. Now, this test, have you been qualified to give it?

Have you been....received training?

MR. CASS: Objection to this test.

THE COURT: Sustained

Q. Have you received training for this test?

A. Yes, ma'ma.

Q. Would you.....

MR. CASS: Objection.

THE COURT: Subtained.

Q. Would you explain what you did at this point?

A. Well, I instructed him not to move his head. I pulled my ink pen out and told him to follow my pen to.....

MR. Cass: Objection.

THE COURT: Subtained. You-all approach the bench

(Whereupon, the following bench conference, was held outside the presence of the jury)

THE COURT: Unless you're prepared to establish a scientific reliability of the Nystagmus gaze test, we're not getting into this.

MS. CAHILL; You're not getting into that?

THE COURT: There's no case law that shows it's scientific reliable. It's been sent back for that. Unless you're prepared to establish it, don't go any further. Okay?

MS. CAHILL: Okay.

(Whereupon the bench conference was concluded)

BY MS. Cahill:

Q. Did you have an opportunity to observe and talk with to the defendant?

A. Yes.

Q. And based on your observations and your conversation what was your opinion of his condition?

A. That he was impaired.

Q. And what did you subsequently do after you had talked with him and observed him?

A. I placed him under arrest for DUI.

The State witness, when he stated that he performed a Nystagmus Glaze Test, he testified falsely and this fact was

known by the State Prosecutor to be false.

The Nystagmus Gaze Test is a "Field Sobriety Test" and like other field sobriety test it is based upon the observations of the a police officer, to how well a person performs the test.

As held in STATE V. SUPERIOR COURT ECT. 718 P. 2d. 189, 193 (Ariz. App. Ct. 1985) at page 189;

"The Nystagmus Gaze test is a field sobriety test. It call for the arresting officer to calculate the blood alcohol level of a motorist based upon the angle of onset of an involuntary oscillation or jerking of the eyeball."

The arresting officer Steve Florence, who is a Tennessee Highway Patrolman, filed a Tennessee Drug Alcohol Report. This document was provided to the defendant, Cass, during discovery. This document which is signed by Steve Florence, states that he did not perform any type of "Field Sobriety Test" to include the Nystagmus Gaze Test. Therefore since the State Prosecutor furnish this document to the defendant, this fact was known to them. (Tenn. Drug Alcohol Report in Appendix)

Additionally set forth on the back of this document, it is required that in order to perform the Nystagmus Gaze Test,

the officer is required to check both eyes, for the following;

1. Eye does not pursue smoothly
2. Distinct Nystagmus at Maximum Deviation
3. Nystagmus onset at 45 degree

A suspect is graded on how well he performed this test. For each check the officer is required to make, a possibility of a point exist. The maximum points which a suspect could score is six. The Tennessee Highway Patrol considers any person who score four or more points to be under the influence. All of the score boxes, for the results of this test are blank.

As set forth in the testimony of the defendant father, Mike Cass, , the defendant, Ronald Cass is blind in his right eye, since birth. Therefore if Trooper Florence had of examined the defendant, Cass eyes, as he said he did, then he would have known this fact and that he could not be given a Nytagmus Gaze Test. (Transcript of Evidence. Page 150 - 151)

Trooper Florence in his testimony did not testify that he was unable to give a Nytagmus Gaze Test, nor did Trooper Florence state maybe he gave the test. What Trooper did testify to was that he did give the defendant Cass, a Nytagmus Gaze Test.

The trial court would not let the state prosecutor proceed with questions which concern the Nystagmus Gaze, but the trial court failed to instruct the jury, as the scientific reliability of the test. The jury was left with the impression that Trooper Florence had given the test of the defendant.

The State Prosecutor was able to get the results in, with the following two questions.

Q. Did you have an opportunity to observe and talk with to the defendant?

A. Yes.

Q. And based on your observations and your conversation what was your opinion of his condition?

A. That he was impaired.

As to the State witness Janet Lard. Under existing Tennessee Law, in order for the State of Tennessee, to use an independent blood test, it must be shown that the blood test was taken for medical treatment, if not, then only that person who had the independent blood alcohol test done, can decide if it will be used in court, as was held in STATE V. GREGG 874 S.W. 2d. 643, 645, (Tenn. 1993) at page 645;

The State Prosecutor, introduced the results of the defendant, Cass, blood test, through the emergency room doctor Janet Lard, and the following events took place.

(Transcript of Evidence, P. 70 & P. 71 lines 1&2)

On Direct Examination by the State.

MS. CAHILL: Your Honor, I'm going to have to pass her Exhibit 3. (Exhibit 3 : Medical Records of Cass)

THE COURT: Pass Exhibit 3 to Dr. Lard, please.

Q. Dr. Lard, would you open that and examine that? And can you identify on the first page, your signature?

A. Yes.

Q. And is that a true and correct copy of your notes made that evening?

A. Yes.

Q. The page one and two are from laboratory work; is that correct?

A. Yes.

Q. And is this the various laboratory work that you directed that to be drawn by Mr. Kimbrough and to be analyzed?

A. Yes.

Q. Now, on page 2 the last entry in there is called special chemistry alcohol. Would you read the numbers by that?

MR. CASS: objection. Ms. Lard didn't take these tests. She came....

THE COURT: Did you rely upon these test in your Treatment of the defendant

A. Yes, I did.

THE COURT: Overruled.

(Transcript of Evidence P. 73, lines 10-21)

Cross, Examination: Cass.

Q. Do you remember making a statement to me that you had taken this blood for a medical purpose?

A. Yes.

Q. So it was taken purely for medical purposes?

A. Right.

Q. Do you feel that a patient has a confidentiality type relationship with his physician?

A. Yes I do

(Transcript of Evidence, P 76, lines 1 thur 4)

Q. I guess what I'm getting at is did you have the results of this test before my exit of the hospital?

A. Yes, I did.

When the state witness, Lard, stated to the Court that she relied upon the blood alcohol test, in the treatment of the defendant, Cass, the state witness Lard, did testify falsely.

When the state witness, Lard testify that she had the results of the test prior to the defendant, Cass, discharge from the hospital, the state witness Lard testify falsely.

These records which the state witness, Lard was testifying to, where being introduce pursuant to the here say, Rule 803 of the Tennessee Rules of Evidence. The questions that the state prosecutor, and the Court and the defendant where asking, where about the records, which the witness, Lard, held in her hands and had been answering questions from.

The state witness Lard, could not have relied upon the blood alcohol test, which she had in her hands, to decide the medical treatment of the defendant Cass.

From the testimony of the state witness Khristie Mathis and supported by the medical records, the defendant Cass was admitted at 19:40 hours and discharged at 21:10 hours.

From the testimony of the state witness, David Kimbrough and supported by the blood alcohol test contained in the medical records. The blood alcohol test, which is contained in the medical records, and which was in the hands of the witness Lard when she testified, is a copy of the blood alcohol report which he transmitted to the emergency room, via computer. This blood alcohol report shows that it was transmitted 21:26 hours or 16 minutes after the defendant Cass, was discharged from the care of Janet Lard. Therefore it was impossible for the witness Lard to have relied on the blood alcohol report that is contain in exhibit 3 of this cause.

The State had copies of these medical records of the defendant in their possession since the 19th of Jan. 1996.
Therefore the State knew of the facts contain in them and did know, that their witness Lard testified falsely.

The State Prosecutor in this cause never made an effort to correct this false testimony or to notify the court or the

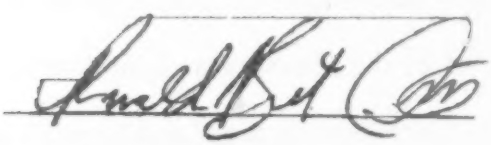
defendant of this false tesimony of their witnesses Lard and Florence. The overt and unconstitutional acts of the State Prosecutor in this cause did deny the Petitioner Ronald Bret Cass a Fair and impartial trial and as such did violate the "Due Process of Law" clause of the 14th Amendment of the United States Constitution.

CONCLUSION

It is respectfully submitted that this Court, should grant certiorari, to review the erroneous judgment of the Court of Criminal Appeals, for the State of Tennessee, at Jackson and so that these important constitutional issues can be settled.

Dated: Jan. 10th, 1999.

Respectfully Submitted



Ronald Bret Cass
2112 Prince Place
Savannah Tenn. 38372
901-925-7754

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

DECEMBER 1997 SESSION

STATE OF TENNESSEE

Appellee

V.

No. 02-C-01-9612-CC-00489

Hardin County

RONALD BRET CASS

Apellant

C. CREED McGINLEY

Judge

(D.U.I. Second Offense)

FOR THE APPELLANT

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Pro Se

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Eleanor Cahill
Asst. District Att. Gen.
111 Church Street
Huntingdon Tn. 38344-0686

OPINION FILED; JAN. 23 1998

AFFIRMED

Joe B. Jones, Presiding Judge

OPINION

The appellant, Ronald Bret Cass (defendant), was convicted of driving while under the influence, second offense, a Class A misdemeanor, by a jury of his peers. The trial court sentenced the defendant to pay a fine of

I

$2,000 and serve eleven months and twenty-nine days in the Hardin County Jail. The defendant is required to serve six months of the sentence.

The trial court suspended the balance of the sentence and ordered that the defendant will serve this portion of the sentence on probation. The defendant's driving privileges were revoked for two years.

~ The defendant presents nine issues for review:

No. 1.

The state witness, Steve Florence, did commit perjury, when he stated that he had performed a horizontal gaze nystagmus test.

NO. 2

The state witness Janet Lard, did commit perjury, when she stated that she had the results of a blood alcohol test

prior to the release, of the defendant Cass, from her care.

NO. 3

The state witness Janet Lard did commit perjury when she stated that she was an employee of the Hardin County Hospital.

NO. 4

The officer, did not have grounds, to request, the defendant, Ronald Cass, to submit to a blood alcohol test, nor did he have probable cause for the warrantless arrest of the defendant, Ronald Cass.

No. 5.

Did the trial court err, in allowing the confidential medical records, of the defendant Cass, into evidence in this cause.

No. 6

The State of Tennessee fail[failed] to prove jurisdiction,

NO. 7

The jury verdict in this cause was against the weight of the evidence.

No. 8.

The State of Tennessee failed to provide an impartial prosecutor who was constitutionally qualified to prosecute this cause.

NO. 9

The failure of the trial court in not allowing me assistance of a non-lawyer, did violate the defendant['s] Sixth Amendment Right U.S. Const. And Article 1, Section 9, right to counsel Tenn. Const. After a thorough review of the record, the briefs submitted by the parties, and the law governing the issues presented for review, it

is the opinion of this court that the judgment of the trial court should be affirmed.

On November 3, 1995, the defendant was operating his pickup truck along Tennessee Highway 22 in Hardin County, Tennessee. Stacy B. Meeks was operating his motor vehicle in the opposite direction on Route 22. Meeks intended to turn onto Tennessee Highway 142 enroute to his home. Suddenly, the defendant's truck crossed the centerline of the highway. Meeks veered to his right to avoid a collision with the defendant's truck. A second later the defendant's truck turned over, The truck came to rest in a ditch adjacent to Route 22.

Mr. Meeks stopped his vehicle and ran to the defendant's truck seconds after he saw the truck come to rest in the ditch. The defendant was the only occupant in

the truck. According to Mr. Meeks, the defendant said "Hey there" several times, began hollering for help, and then began cursing. When others arrived, an attempt was made to remove the defendant from the truck. It was unsuccessful.

State Trooper Steve Florence was dispatched to the scene. He witnessed the truck in the ditch. According to Trooper Florence, the defendant was cursing, kicking, and screaming The defendant was the only person in the truck. Trooper Florence called for rescue assistance and an ambulance. The rescue squad extricated the defendant from the truck. He was transported to the Hardin County General Hospital by ambulance.

When Trooper Florence came into contact with the defendant at the scene, he noticed the defendant had a

strong odor of an intoxicant on his breath, It was the opinion of Trooper Florence that the defendant's ability to operate a motor vehicle was impaired by the consumption of intoxicating beverages. Trooper Florence read to the defendant the informed consent form permitting an analysis of his blood alcohol content. The defendant read the agreement himself as well. Finally, the defendant told Trooper Florence it was against his religion to give his permission for such a test. Trooper Florence described the defendant as having "very red and bloodshot" eyes, walking with a "slight stagger," and having to support himself by holding onto the bars in the jail.

Those who attended the defendant at the hospital noticed a strong odor of an intoxicating beverage on the defendant's breath. The defendant was cooperative

times and uncooperative at other times. He permitted an employee of the hospital to draw blood from his body. An analysis of the blood revealed a blood alcohol content of .28.

A registered nurse assigned to the emergency room had known the defendant from junior high school. She had seen the defendant sober at times and drunk at other times. She testified the defendant smelled of an intoxicant. He was agitated, upset, and was cursing while in the emergency room. His speech was slurred. The defendant admitted to the nurse he had consumed a "few drinks."

It was established the defendant had one prior conviction for driving while under the influence.

The foregoing summary of the evidence establishes

there was sufficient evidence to support a finding by a rational trier of fact that the defendant was guilty of driving while under the influence, second offense, beyond a reasonable' doubt. Tenn. R. App. P. 13(e).

This court will not consider issues one through three. The defendant accuses Trooper Florence and Doctor Lard of committing perjury. First, there is no evidence in the record to support the defendant's claim that these two witnesses committed perjury. Second, the factual matter asserted in these issues reflects upon the credibility of the witnesses. The jury found these two witnesses credible and believable. This court cannot reweigh or reevaluate the evidence.

The defendant contends Trooper Florence did not have probable cause to arrest him without a warrant, and, further, he did not have the right to ask the defendant to

submit to a blood alcohol test. This court disagrees. Trooper Florence arrived at the scene before the defendant was removed from the truck. He saw the defendant was the only person inside the truck. He saw the defendant after he was removed from the truck. He smell a strong odor of an intoxicant on the defendant's breath. The defendant's eyes were "very red and bloodshot." The defendant's conduct at the scene was consistent with a person under the influence of an intoxicant. It was the opinion of Trooper Florence that the defendant's ability to operate a motor vehicle was impaired due to the consumption of an intoxicant. This opinion was supported by the hospital personnel and the results of the blood test to determine the defendant's blood alcohol content.

Trooper Florence had ample probable cause to arrest the defendant without benefit of an arrest warrant. State v. Evetts, 670 S.W.2d 640, 642 (Tenn. Crim. App.) Trooper Florence had every right to ask the defendant to submit to a blood alcohol test. The defendant impliedly consented to take such a test if he, as in this case, operated a motor vehicle while under the influence. Tenn. Code Ann. 55-10-406 (a) (1)

The defendant contends his medical records at the Hardin County General Hospital were confidential, and it was error of prejudicial dimensions to admit these records into evidence. The state issued a subpoena duces tecum to obtain the records. The medical records qualify as business records within the meaning of Rule 803(6), Tennessee Rules of Evidence. The state laid the proper foundation for the admission of these records. The manager of the records department, the emergency room

doctor, a medical technician, and a registered nurse testified in this cause. This court has previously held that medical records are admissible as business records in driving while intoxicated cases. See State v. Hailey, 769 S.W.2d 228, 230-31 (Tenn. Crim. App. 1989) This issue is without merit.

The defendant further contends the results of his blood test were contained in the medical records. He argues he did not consent to the test. The defendant overlooks the fact the blood was not drawn and tested at the direction of Trooper Florence because the defendant refused to sign the informed consent agreement. The blood was drawn at the direction of the emergency room doctor. The doctor ordered other tests in order to determine the defendant's physical condition since he complained of being injured when he wrecked his truck.

Thus, the results were admissible.

The defendant also argues the record is silent regarding the technician's qualifications to perform a blood alcohol test and

whether the equipment used was in proper working order. The technician who performed the test testified during the trial. He was subjected to rigid cross-examination regarding his qualifications. The record reflects the technician was highly qualified to perform the test. The defendant did not object to the admission of the blood alcohol test at trial on the ground the state failed to introduce evidence that the equipment used was in good working order. Therefore, this issue has been waived. Tenn. R. App. P. 36(a).

Finally, the defendant argues his Fourth Amendment and Fourteenth Amendment rights were violated by subpoenaing and introducing his medical records. No constitutional right of the defendant was violated in this regard. State v. Fears, 659 S.W.2d 370, 376 (Tenn. Crim.. App.), cert. denied, 465 U.S. 1082, 104 S.Ct. 1450, 79 L.Ed.2d 768 (1984),

This issue is without merit.

The defendant contends the State of Tennessee failed to establish it had jurisdiction to prosecute him. He argues the

mishap occurred in the Shiloh National Military Park and only the United States Government could prosecute him.

This court disagrees.

The defendant operated a motor vehicle on a state highway, which is maintained by the state. The mishap occurred on this state highway in Hardin County, Tennessee. The trial court had personal, subject matter, and territorial jurisdiction over this matter.

This issue is without merit.

The defendant contends the state failed to provide an impartial prosecutor who was constitutionally qualified to prosecute him. He predicates his argument on the fact the assistant district attorney general failed to file a copy of her oath of office with the Secretary of State. This issue is frivolous. The simple fact the oath of office is not on record with the Secretary of State does not disqualify an assistant district attorney general. Moreover, the defendant did not challenge the qualifications of the assistant district attorney general who prosecuted him Prior to trial

Thus, this issue has been waived. Tenn. R. App. P. 36(a).

This issue is without merit.

The defendant contends he was entitled to the assistance of a non-lawyer to representative to assist him in the preparation and presentation of his defense. He relies upon the United States and Tennessee constitutional rights to the effective assistance of counsel. The defendant's reliance upon these constitutional provision is misplaced. This court has held an accused is not entitled to the assistance of a non-lawyer during the course of a trial, State v. Sower , 826 S.W.2d 924, 929 (Tenn. Crim. **App. I 991), .** denied, 510 U.S. 883, **114** S.Ct. 229, 126 L.Ed.2d 184 (1993). This issue is without merit.

_____

JOE B. JONES PRESIDING JUDGE

CONCUR;

_____

JERRY L. SMITH JUDGE

_____

CURWOOD WITT, JUDGE

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

STATE OF TENNESSEE

APPELLEE

V.

RONALD BRET CASS

APPELLANT

HARDIN COUNTY

No. 02C01-9612-CC-00489

ORDER

Upon consideration of the application for permission to appeal and the record before us, the application is denied.

PER CURIAM

FILED

OCT 19, 1998

Amendment IV

"The right of the people to be secure. in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any

person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself,

ARTICLE XIV.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

68-11-402. Furnishing copies of records in compliance with subpoenas. - (a) Except as hereinafter provided, when a subpoena duces tecum is served upon a custodian of records of any community mental health center or hospital duly licensed under the laws of this state in an action or proceeding in which the hospital is neither a party nor the place where any cause of action is alleged to have arisen, and such subpoena requires the production of all or any part of the records of the hospital or community mental health center relating to the care or treatment of a patient in such hospital or community mental health center, it shall be sufficient compliance therewith if the custodian or other officer of the hospital or community mental health center within five (5) days after being served with a subpoena duces tecum, shall, either by personal delivery or certified

or registered mail, file with the court clerk or the officer, body or tribunal conducting the hearing, a true and correct copy (which may be a copy reproduced on film or other reproducing material by microfilming, photographing, Photostating or other approximate process, or a facsimile, exemplification or copy of such reproduction or copy) of all records described in such subpoena.

(b) Any party intending to use the provisions of this section shall furnish the adverse party or the adverse party's attorney a copy of the subpoena duces tecum not less than ten (10) days prior to the date set for the trial of the matter for which the records may be introduced. [Acts 1977, ch. 158, § 2; T.C.A., § 53-1502; Acts 1984, ch. 819, §§ 2, 3.1

68-11-404. Opening of sealed envelopes. - (a) Unless the sealed envelope or wrapper is returned to a witness who is to appear personally, the copy of records shall remain

sealed and shall be opened only at the time of trial, deposition or other hearing, upon the direction of the judge, court, officer, body or tribunal conducting the proceeding, in the presence of all parties who have appeared in person or by counsel at such trial, deposition or hearing. Before directing that such inner envelope or wrapper be opened, the judge, court, officer, body or tribunal shall first ascertain that either:

(1) The records have been subpoenaed at the instance of the patient involved or such patient's counsel of record;

(2) The patient involved or someone authorized in such patient's behalf to do so for such patient has consented thereto and waived any privilege of confidentiality involved; or

(3) The records have been subpoenaed in a criminal proceeding.

Records which are not introduced in evidence or required as part of the record shall be returned to the person or entity from whom received.

(b)(1) Upon receipt of a subpoena, the custodian shall send the records to the attorney responsible for the issuance of the subpoena at the place, and on or before the date designated in the subpoena, if such subpoena:

(A) States conspicuously on its face that the records are required in a tort action or proceeding in which the plaintiff has raised the issue of the plaintiff's physical or emotional condition; and

(B) Directs the custodian's attendance at a deposition.

(2) The attorney responsible for the issuance of the subpoena need not meet the requirements of subsection (a) before opening the sealed records, if the attorney furnishes a copy of the records to the plaintiff or someone

authorized on the plaintiff's behalf to receive them. [Acts 1977, ch. 158, § 4; T.C.A., § 53-1504; Acts 1986, ch. 544, § 1; 1992, ch. 921, § 1.1

Rule 803. Hearsay exceptions. - The following are not excluded by the hearsay rule:

(3) Then Existing Mental, Emotional, or Physical Condition. - A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) Statements for Purposes of Medical Diagnosis and Treatment. - Statements made for purposes of medical diagnosis and treatment describing medical history; past or present symptoms, pain, or sensations; or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis and treatment.

(6) Records of Regularly Conducted Activity. - A memorandum, report, record, or data compilation in any form of acts, events, conditions, opinions, or diagnoses made at or near the time by or from information transmitted by a person with knowledge and a business duty to record or transmit if kept in

the course of a regularly conducted business activity and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term 'business' as used on this paragraph includes every kind of business, institution, association, profession, occupation, and calling, whether or not conducted for profit.

TENNESSEE HIGHWAY PATROL
ALCOHOL/DRUG INFLUENCE
REPORT

CASE NUMBER 9399710
DISTRICT 8
CITATION NO. 9399710
TROOPER Eliceman
BADGE NO. 348

☒ ACCIDENT ☐ VIOLATION ☐ OTHER
TIME OF ACCIDENT 620
TIME OF CUSTODY 650

SUSPECT ARREST INFORMATION

NAME	☐ MR. ☐ JUVENILE	SEX ☒ M ☐ F	RACE	D.O.B.	AGE	OPERATOR'S LIC. NO.	STATE
D. CASS		W		01-01-67	28	63154580	TN

ADDRESS	☐ HOME ☐ BUS.	STATE	ZIP CODE	TELEPHONE NUMBER	☐ HOME ☒ BUS.
HAMLP ADAMSVILLE		TN	38310		

☐ VEHICLE SPEED _____ M.P.H. IN A _____ M.P.H. ZONE
☐ FAILURE TO OBEY TRAFFIC CONTROLS
☐ SUSPECT APPEARED INTOXICATED
☐ IRREGULAR STARTING OR STOPPING OF VEH.
☒ DRIVE/WEIGHT IN TRAFFIC ACCIDENT, VI. 1098
VEHICLE DRIVING VEHICLE ☐ UNKNOWN
☐ OVERTURNING WITHIN ROADWAY
☐ VEHICLE LEAVING ROAD ROADWAY
☐ OTHER (Explain in narrative)

.2 NORTH OF SR 142 ##

DRIVER PURCHASED TO EMERGENCY EQUIPMENT (Check all applicable) ☒ NONE
☐ FLASHLIGHT ☐ LAMPS ☐ SIGNS ☐ UNLAWFUL BY _____
☐ PURCHASED VEHICLE EQUIPMENT BY _____

☒ APPEARED TO BE INTOXICATED
☐ WITNESS DRIVING VEHICLE
☐ ATTEMPTED TO FLEE VEHICLE
☐ UNCOOPERATIVE OR ABUSIVE
☐ LEANED OR BRACED SELF AGAINST VEHICLE WHILE WALKING OR STANDING
☐ OTHER (Explain)

CLOTHING: ☐ DISARRANGED ☒ DIRTY/STAINED ☐ TORN/RIPPED ☐ UNBUTTONED ☐ NORMAL
EYE CONDITION: ☒ BLOODSHOT/RED ☐ CLOSED ☐ DILATED/PUPILS ☐ WATERY ☐ NORMAL
MENTAL STATE: ☒ CONFUSED ☐ INCOHERENT ☐ STUPOR ☐ UNCOOPERATIVE ☐ NORMAL
WALK: ☐ FALLS ☐ STAGGERED ☐ STAMBLING ☒ UNABLE ☐ NORMAL
SPEECH: ☒ LOUD ☐ SLURRED ☐ SLURRED ☐ TALKATIVE ☐ NORMAL

INTOXICANT: 3 (INTENSITY CODE: 1. SLIGHT ODOR, 2. DISTINCT ODOR, 3. EXTREME ODOR)

VERBAL ACTIONS: ☐ BELLIGERENT ☐ COMBATIVE ☐ CRYING ☐ DEFICATED ☐ FAILED MIRANDA ☐ ARGUMENTATIVE ☐ LAUGHING ☐ VERBATED ☐ OTHER
EFFECTS OF INTOXICANT: ☐ MILD ☐ SLIGHT ☒ SERIOUS ☐ EXTREME ☐ UNDETERMINED
ABILITY TO OPERATE VEH.: ☐ UNABLE ☒ POOR ☐ FAIR ☐ NORMAL ☐ UNDETERMINED

(If FLASH VIEW disclosure involvement and duration in detail.) ☐ NONE ALCOHOL OR VEHICLE ☐ CONTINUE IN NARRATIVE

TY BEER CANS 1 PACK OF ROLLING PAPERS

PERSONAL PROPERTY (TYPE AND COLOR)
Hat or Cap NONE
Jacket or Coat CAMOFLAGE JACKET
Shirt or Dress PULLOVER
Pants or Skirt BLUE JEANS
Type of Shoes BOOT LACE UP

27 ☐ YES ☐ NO DRIVER ENTERED IN LOG

ALCOHOL SENSOR USED? ☐ YES ☐ NO
VIDEO TAPED? ☐ YES ☐ NO

BEST AVAILABLE COPY

CHEMICAL TEST DATA

BLOOD ☐ URINE ☐ OTHER ☐ NONE ☐

OFFICER'S NOTE: Withdrawn

ANALYSIS RESULTS: _____ IF URINE, WHAT DOSIMETRY AND LOCATION: _____

TAKEN BY: _____ WITNESSED BY: _____

FIELD SOBRIETY TASKS

MUST COMPLETE 3 OUT OF 4 TESTS UNLESS REFUSED/UNABLE ☐ REFUSED ☒ UNABLE TO PERFORM TASK

TEST SURFACE: ☐ ASPHALT/CONCRETE ☐ DIRT ☐ GRASS ☐ SNOW ☐ LEVEL ☐ SLIGHT GRADE ☐ OTHER _____

TEST CONDITION: ☐ DAYLIGHT ☐ DARK ☐ ARTIFICIAL LIGHT ☐ WINDY ☐ RAINING ☐ OTHER _____

LINE USED: ☐ PAINTED LINE ON ROADWAY ☐ IMAGINARY ☐ OTHER _____

HORIZONTAL GAZE NYSTAGMUS

☐ REFUSED TO PERFORM TASK ☐ CANNOT PERFORM TASK, Explain: _____

PUPIL EQUAL ☐ YES ☐ NO ☐ DOES NOT HAVE EQUAL RADII CORRECTION

	POINTS PER EYE	L. EYE	R. EYE
EYE DOES NOT PURSUE SMOOTHLY	1		
DISTINCT NYSTAGMUS AT MAXIMUM DEVIATION	1		
NYSTAGMUS ONSET BEFORE 45 DEGREES	1		

MAXIMUM 6 POINTS: (4 or more points indicates .10 or more)

COMMENTS:

WALK & TURN

☐ REFUSED TO PERFORM TASK

INSTRUCTIONS STAGE:	POINTS
CANNOT KEEP BALANCE	1
STARTS TOO SOON	1
IMPROPER TURN	1
CANNOT COMPLETE TEST	1

WALKING STAGE:	POINTS	NOT 9 STEPS	AND 9 STEPS
STOPS WALKING	1		
MISSES HEEL-TOE	1		
STEPS OFF LINE	1		
RAISES ARMS	1		
IMPROPER NUMBER OF STEPS TAKEN	1		

MAXIMUM 9 POINTS: (2 or more points indicates .10 or more)

COMMENTS:

ONE-LEG-STAND

☐ REFUSED TO PERFORM TASK

☐ USE NUMBERS ON ☐ LEFT ☐ RIGHT

	POINTS	1-10 SECONDS	11-20 SECONDS	21-30 SECONDS
SWAYS WHILE ON ONE LEG	1			
RAISES ARMS WHILE ON ONE LEG	1			
HOPS WHILE ON ONE LEG	1			
FOOT DOWN BEFORE TIME	1			
CANNOT COMPLETE TASK	1			

MAXIMUM 5 POINTS: (2 or more points indicates .10 or more)

COMMENTS:

FINGER-TO-NOSE

☐ REFUSED TO PERFORM TASK ☐ CANNOT PERFORM TASK, Explain: _____

☐ RIGHT ARM: ☐ COMPLETED 3 SECONDS ☐ MISSED NOSE ☐ HAND

☐ LEFT ARM: ☐ COMPLETED 3 SECONDS ☐ MISSED NOSE ☐ HAND

COMMENTS:

ADDITIONAL COMMENTS

WITNESS _____

WITNESS _____

28A